REMARKS

Favorable reconsideration of the subject patent application is respectfully requested in view of the above amendments and the following remarks. Following the amendments, claims 72-95 are pending in the application, with claims 72, 77, 82 and 87 being in independent format.

The specification has been amended to correct a typographical error in the reference to related patent applications. Claims 77 and 87 has been amended to clarify that the polypeptide having 95% identity to SEQ ID NO: 8 and fusion protein comprising a sequence having 95% identity to SEQ ID NO: 8 are able to bind to fibroblast growth factor. Support for this amendment may be found, for example, in Example 5 (page 54, lines 1-19), and throughout the specification as originally filed. Newly added claims 92-95, dependent upon claims 72, 77, 82 and 87, respectively, are drawn to methods comprising administering a composition comprising an inventive polypeptide or fusion protein, plus a known immunostimulatory agent, wherein the polypeptide of fusion protein enhances an immune response against the known immunostimulatory agent. Applicants submit that support for this claims 92-95 may found, for example, in Examples 8 and 9 (page 57, line 8 - page 59, line 21) of the specification as originally filed.

It is urged that support for all of the above amendments may be found in the specification as originally filed and that none of the amendments constitute new matter or raise new issues for consideration.

A certified copy of prior related patent application PCT/NZ03/00105, filed in New Zealand on May 27, 2003, is submitted herewith as required under 35 USC §119(b).

The Examiner stated that the Declaration and Power of Attorney submitted on October 19, 2003, is defective because it does not include the phrase "original, first and joint inventors". A substitute Declaration and Power of Attorney is submitted herewith.

Claim Rejections under 35 USC §112, second paragraph

Claims 77-81 and 87-91 stand rejected under 35 USC §112, second paragraph, as being indefinite. Specifically, the Examiner has objected to the phrase "wherein the polypeptide has the same functional properties as SEQ ID NO: 8" in independent claims 77 and 87. As noted

above, claims 77 and 87 have been amended to replace this phrase with "wherein the polypeptide is able to bind to fibroblast growth factor".

It is submitted that one of skill in the art, on being provided with the instant specification, would clearly be able to determine the metes and bounds of amended claims 77 and 87, and that this rejection of the claims may thus be properly withdrawn.

Claim Rejections under 35 USC §102(b)

Claims 77-81 and 87-91 stand rejected under 35 USC §102(b) as being anticipated by WO 00/24756 to Ruben et al. This rejection is respectfully traversed.

The Examiner asserts that Ruben et al. teach a FGFR5 which is 99.4% identical to SEQ ID NO: 8 and FGFR5 fusion proteins, together with the use of such polypeptides to treat infectious disease by increasing the immune response. Applicants note that increasing an immune response is only one of many possible uses included in a long list of desired therapeutic applications for FGFR5 polypeptides included in the Ruben et al. publication. For example, Ruben et al. also state that FGFR5 polypeptides may be employed in the regeneration of tissues including organs, muscle, vascular, nervous, hematopoietic and skeletal tissue; to treat or prevent cell death due to inflammation or tissue injury; to modulate mucositis; to treat or detect disorders involving the growth and vascularization of endothelial tissues; to stimulate revascularization of ischemic tissues damaged from thrombosis, arteriosclerosis and other cardiovascular conditions; to prevent hyper-vascular diseases; to treat or detect hyperproliferative disorders, including, but not limited to, neoplasms; to treat or prevent organ rejection or graft-versus-host diseases; to treat inflammatory conditions such as ischemia-reperfusion injury, arthritis and/or nephritis; and to treat or detect infectious diseases. Applicants further note that Rubens et al. provide no data to support any of these proposed uses. Indeed, the reference includes no support for any activity for FGFR5 polypeptides or fusion proteins.

The courts have held that "even if the claimed invention is disclosed in a printed publication, that disclosure will not suffice as prior art if it was not enabling" (In re Donohue, 766 F.2d 531, 226 USPQ 619 (C.A. Fed. 1985)), and that the description of the invention in the

printed publication must be "sufficient to give possession of the invention to the public" (In re Grice, 49 CCPA 1124, 301 F.2d 929, 133 USPQ 365).

It is urged that the disclosure of Rubens et al. merely states several hoped-for, but unproven, potential uses for FGFR5 polypeptides and neither enables, nor gives possession to the public, of the presently claimed methods of enhancing an immune response. Applicants submit that the Rubens et al. disclosure therefore does not constitute an effective prior art reference under 35 USC §102(b), and that this rejection of claims 77-81 and 87-91 may thus be properly withdrawn.

Concluding Remarks

The Examiner has indicated that claims 72-76 and 82-86 are allowable. Early reconsideration and allowance of all the presently pending claims is respectfully requested. Should the Examiner have any further concerns regarding the claims, he is respectfully requested to telephone the undersigned at 206.382.1191

Respectfully submitted,

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